IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22406 of 2007
With
SPECIAL CIVIL APPLICATION No. 22407 of 2007
To
SPECIAL CIVIL APPLICATION No. 22414 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOK SARDARBHAI DHRUV & 8 - Petitioners
Versus
THE STATE OF GUJARAT & 3 - Respondents

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Appearance :
MR KR KOSHTI for Petitioners : 1 - 9.
MR AMIT PATEL AGP for Respondent : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 3.
MR DEEPAK V PATEL for Respondents : 2 - 3.
MR DG CHAUHAN for Respondents : 4,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 25/10/2007

COMMON ORAL JUDGMENT

1. Rule. Mr. Amit Patel, learned AGP waives service of Rule on behalf of respondent No. 1, Mr. Deepak Patel, learned advocate waives service of Rule on behalf of respondent No. 2 and 3 and Mr. Chauhan, learned counsel waives service of Rule on behalf of respondent No. 4. By consent, rule is fixed forthwith.

2. Shri Koshti, learned counsel appearing for the petitioners submitted that in this group of matters, the petitioners' main grievance is with regard to treating them as employees of respondent No. 2 and this Court (Coram: Jayant Patel, J.) in Special Civil Application No. 9782 of 2002 with Special Civil Application Nos. 16451 to 16462 of 2003 on 26.2.2004 reserved liberty to raise appropriate industrial disputes with regard to alleged sham and bogus contract in question.

3. Shri Chauhan, learned counsel appearing for the respondent No. 4 and Shri Patel, learned counsel appearing for respondent Nos. 2 and 3 submitted that concerned workmen raised dispute and one of such demand is placed on record and submitted that as per the terms of demand, there could not have been any other order but the order of Reference dated 2.3.2006 passed by the Assistant Labour Commissioner and therefore, as demand itself is not in respect of sham and bogus contract, the order dated 2.3.2006 is rightly passed and the direction for amending the same has rightly been

rejected by the concerned Assistant Labour Court vide order dated 12.7.2006.

4. Shri Koshti, learned counsel appearing for the petitioners has submitted that in fact the workmen have been agitating right from the beginning that they are employees of respondent No. 2 and under the guise of sham and bogus contract, they have been denied the benefits of status of being employees of the respondent No. 2. Shri Koshti, learned counsel has submitted that even in the order passed by this Court (Coram: Jayant Patel, J.) on 26.2.2004, it has been clearly mentioned that a liberty is reserved to the workmen to raise the independent reference in respect of the alleged sham and bogus contract for challenging the termination as the claim is that they were workmen of respondent No. 2. Shri Koshti has submitted that as the order dated 2.3.2006 making reference is not in any way referring to the examining the veracity of contract, the order dated 2.3.2006 as well as order dated 12.7.2006 be quashed and set aside with liberty to workmen to raise appropriate industrial dispute exactly in terms of the observation made by this Court (Coram: Jayant Patel, J.) in order dated 26.2.2004 in respect of Special Civil Application No. 9782 of 2002 and allied matters.

5. Shri Chauhan, learned counsel for respondent Nos. 4 as well as Shri Patel, learned counsel for respondent Nos. 2 and 3 submitted that they cannot have any objection if these two orders i.e order dated 2.3.2006 as well as order dated 12.7.2006 are quashed and set aside and liberty is

reserved to workmen to raise appropriate industrial dispute in terms of the observations of this Court (Coram: Jayant Patel, J.) in order dated 26.2.2004 passed in Special Civil Application No. 9782 of 2002 and allied matters.

6. Shri Deepak Patel, learned counsel for the respondent Nos. 2 and 3 submitted that the finding of the Labour Court, which was challenged in the aforesaid group of matters have been confirmed by this Court (Coram: Jayant Patel, J.) in his order dated 26.2.2004.

7. Shri Patel, learned AGP appearing for respondent No. 1 submitted that the Court may pass appropriate order in view of the aforesaid submissions made by the counsel for the parties.

8. Shri Deepak Patel's submission is misconceived as it could be seen from Para-6 of the judgment dated 26.2.2004 that this Court (Coram: Jayant Patel, J.) has in terms granted liberty to raise the dispute in respect of sham and bogus contract and therefore, as that order has not been challenged, it has attained finality under which it is open to the workmen to raise appropriate industrial disputes in respect of sham and bogus contract, due to which, they were denied the status of being employee of respondent No. 2.

9. As counsel for the parties have consented that the order of Reference dated 2.3.2006 and order dated 12.7.2006 shall be quashed and set aside and liberty be reserved to

the workmen in terms of the observations made by this Court (Coram: Jayant Patel, J.) vide order dated 26.2.2004 in Special Civil Application No. 9782 of 2002 and allied matters to raise fresh demand before the Competent Authority, without going into the merits at this stage, the following order is passed in the interest of justice:

"The order dated 2.3.2006 and 12.7.2006 are hereby quashed and set aside as the counsel for the parties have no objection if they are quashed and set aside. The counsels have also no objection if liberty is granted to the workmen to raise appropriate Industrial Dispute in terms of observations made by this Court (Coram: Jayant Patel, J.) in order dated 26.2.2004 passed in Special Civil Application No. 9782 of 2002 and allied matters, the workmen accordingly are at liberty to raise appropriate industrial dispute as per the observations made in Para-6 of the order dated 26.2.2004 passed in Special Civil Application No. 9782 of 2002 and other allied matters assailing the sham and bogus contract due to which the workmen were denied the status of being employees of respondent No. 2.

2. Quashing of these two orders shall not be construed in any way an impediment in the way of the workmen in raising appropriate industrial dispute afresh.

3. As the counsel have agreed for time limit to be fixed for conciliation proceedings and they have ensured that no unnecessary adjournment

would be requested, the respondent No. 1 is hereby directed to undertake the conciliation proceedings on the demand/dispute that may be raised by the workmen within a period of 3 months from the receipt thereof.

4. It goes without saying that the contentions of the parties are kept open and Court has not opined on merits of the matters. ”

10. In view of this, this group of petitions are disposed of. Rule is made absolute to the aforesaid extent. The registry is directed to keep the copy of this judgment in all the matters.

(S.R.BRAHMBHATT, J.)

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